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SUBPART 5303.1—SAFEGUARDS

5303.104-5 Disclosure, protection, and marking of proprietary and source selection information.

(b) Each HCA or designee shall designate officials to assist individuals responsible for preparing material that may include source selection information.

(c)(1) The Deputy Assistant Secretary (DAS) (Contracting), the Associate and Assistant DAS (Contracting) (SAF/AQC); the division chiefs and deputy division chiefs of SAF/AQCX, AQCS, AQCO, and AQCP; and each HCA or designee identified in DFARS 202.101 and 5301.601-91 (b) may authorize persons or classes of persons access to proprietary or source selection information.

(2) The following individual persons or classes of persons are authorized access to proprietary and source selection information if necessary to perform their official duties:

- (i) Those persons, other than competing contractors, participating in a formal source selection subject to AFFARS Appendices AA or BB;
- (ii) Individuals within the Office of the Assistant Secretary of the Air Force for Acquisition (SAF/AQ); and
- (iii) Individuals within the Office of the General Counsel (SAF/GC).

5303.104-6 Restrictions on employment or business opportunity discussions between competing contractors and procurement officials.

(f) *Evaluation of recusal proposal.* ASAF(A) is the recusal approval authority for Program Executive Officers (PEOs), Designated Acquisition Commanders (DACs), and members of the Secretariat and Air Staff. PEOs and DACs are HCA designees with authority to approve recusal requests for procurement officials in programs under their cognizance. The Air Force General Counsel (SAF/GC) is the Air Force Designated Agency Ethics Official (DAEO). SAF/GC has authorized the Assistant General Counsel for Acquisition (SAF/GCQ) and the Judge Advocate General to advise and provide consultation to the Air Force officials having authority to approve recusal requests.

5303.104-9 Certification requirements.

(f) *Exceptions to certification requirements.*

(2) The contracting officer shall submit requests for waivers to the certification requirements in FAR 3.104-9 through the cognizant MAJCOM to SAF/AQCX for processing.

5303.104-10 Solicitation provision and contract clauses.

(c) If information received under the clause at FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, indicates that a price or fee adjustment may be appropriate, the contracting officer shall submit a report to the Assistant General Counsel for Contractor Responsibility (SAF/GCR) in accordance with 5303.203. The report shall contain the information required in DFARS 209.406-3, as applicable.

5303.104-11-90 Processing violations or possible violations.

(a) PEOs and DACs are the designated authorities to review and take appropriate action on contracting officer reports concerning violations or possible violations related to programs under their cognizance. For Other Contracting, MAJCOMs shall designate an individual and establish procedures to review violations or possible violations reported by the contracting officers.

(b) The HCA or designee shall submit any agency head notifications in FAR 3.104-11 (f) directly to ASAF(A) for submittal to SAF/OS.

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(c) Upon completing the processing of any disclosure of violations or possible violations, the contracting officer shall notify SAF/GCR in writing of the actions taken by the HCA, PEO, or DAC.

SUBPART 5303.2—CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL**5303.203 Reporting suspected violations of the Gratuities clause.**

(a) The contracting officer shall obtain assistance from the servicing staff judge advocate in preparing reports required by this section. In addition to the requirements in DFARS 209.406-3, the report shall also include:

- (1) An estimate of the amount of the gratuity allegedly given or offered to the Government officer or representative, and the cost incurred by the contractor in giving or offering such gratuity; and
- (2) An analysis by the staff judge advocate of the facts and evidence presented in the contracting officer's report along with a statement of legal sufficiency.

(b) The staff judge advocate for the cognizant contracting activity shall submit three copies of the report to SAF/GCR, 1740 Air Force Pentagon, Washington, DC 20330-1740. A copy of the report and recommendations shall be forwarded to the MAJCOM Judge Advocate and Chief of Contracting for review, comment, and recommendation. MAJCOM comments and recommendations shall be sent to SAF/GCR and arrive not later than 30 days after the date of the contracting officer's report. MAJCOM/JA shall be responsible for coordinating MAJCOM actions.

5303.204-90 Treatment of violations.

(a) SAF/GCR is the agency designee with authority to conduct hearings, and to make findings of fact with respect to:

- (1) Whether a gratuity was offered or given by a contractor or any agent or representative of such contractor to a Government officer or employee with a view towards securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of the contract; and
- (2) Where appropriate, the amount of the costs incurred by the contractor in providing the gratuity.

(b) SAF/GCR is required to forward its findings and recommendations to the Assistant Secretary of the Air Force for Acquisition, who will take appropriate action after reviewing the findings and recommendations.

(c) The Office of the Judge Advocate General (HQ USAF/JA) will designate a JAG officer or attorney-advisor, who will be responsible for the presentation and management of the case for the Government in the event that SAF/GCR issues a notice of hearing to the contractor. To this end, the designated JAG officer or attorney-advisor will be responsible for the taking and defending of any dispositions, the presentation of testimony, evidence, and argument at the administrative hearing, the filing of any motions or other pleadings or documents for consideration by SAF/GCR or any other action necessary to represent the Government in the case.

(d) The contracting activity and the MAJCOM will provide witnesses and other support needed by the designated JAG officer or attorney-advisor presenting the Government's case.

SUBPART 5303.3—REPORTS OF SUSPECTED ANTITRUST VIOLATIONS**5303.301 General.**

(a) Air Force procedures for reporting possible violations of Federal criminal statutes relating to procurement, including reports of possible fraud, are prescribed in Subpart 5309.4.

(b) Submit reports of noncompetitive practices to SAF/AQCX for submission to the Secretary or process in accordance with Subpart 5309.4, as applicable.

SUBPART 5303.6—CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM

5303.602 Exceptions.

Heads of contracting activities may authorize exceptions to the policy in FAR 3.601. Organizations that are not assigned to the MAJCOMs listed in DFARS Subpart 202.1 shall submit requests to SAF/AQCX for approval.

SUBPART 5303.7—VOIDING AND RESCINDING CONTRACTS

5303.703-90 Authority.

(a) Within the Air Force, the Assistant Secretary of the Air Force for Acquisition is vested with the authority to declare void and rescind contracts pursuant to FAR Subpart 3.7.

(b) SAF/GCR is delegated authority to:

(1) Consider cases, conduct hearings, and make recommendations as to whether to declare void and rescind Air Force contracts in relation to which there has been a final conviction for violations as outlined in FAR 3.703; and

(2) Hold hearings and make findings and recommendations regarding the recovery of any amounts expended and property transferred by the Air Force during the course of such contracts.

(c) SAF/GCR will forward its findings and recommendations, after appropriate coordination, to the Assistant Secretary of the Air Force for Acquisition for appropriate action.

5303.705 Procedures.

(a) *Reporting.*

(1) SAF/GCR, will notify the Civil Division, Department of Justice, when an action is being considered in this subpart.

(2) The contracting officer shall prepare the report required in FAR 3.705 (a) with the assistance of the servicing staff judge advocate. The report shall contain the name and telephone number of the individual assigned to the case as the point of contact for the activity making the report, and shall include the following information:

(i) Name and address of the individual or entity convicted;

(ii) Name, address, and telephone number of the prosecuting attorney;

(iii) Evidence reflecting the final conviction; this would typically consist of the judgment, order, or sentencing document(s) issued by the court;

(iv) Description of the contract or contracts concerned, including the contract number(s), and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid to the contractor and the amount still due, and a copy of the contract(s);

(v) An analysis and evidence as to why the statutory violation resulting in the conviction involves or relates to the contract(s) identified in (iv) above;

(vi) An analysis and identification of any tangible benefits received and retained by the Air Force under the contract(s), and a calculation of the value of those benefits;

(vii) A recommendation as to whether or not action should be taken to void the contract(s) in question; and

(viii) A statement detailing whether debarment or suspension of the contractor or individual convicted is in effect, has been initiated, or will be initiated.

(3) The contracting officer shall submit three copies of the report to the MAJCOM Director of Contracting who shall review the report, obtain a review from the command staff judge advocate, and forward the report to SAF/GCR. The report should arrive at SAF/GCR not later than 30 days after the contracting activity learns of the conviction.

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